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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,719	03/21/2006	Ronald Vermeer	CS-8755/BCS033048	4678

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EXAMINER	
FISHER, ABIGAIL L	

ART UNIT	PAPER NUMBER
1616	

NOTIFICATION DATE	DELIVERY MODE
05/04/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/572,719	VERMEER, RONALD	
	Examiner	Art Unit	
	ABIGAIL FISHER	1616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Mina Haghighatian/
Primary Examiner, Art Unit 1616

Continuation of 11. does NOT place the application in condition for allowance because: The rejections are maintained for the reasons set forth in the Final Office action mailed on 3/25/10. Applicants argue that given the broad scope of surfactants described as suitable and the absence of any suggestion of alkanolethoxylates, one skilled in the art would find little if any reason to use the very specifically defined combination of narrowly defined alkanolethoxylate penetration enhancers and very specific types of two-component polymeric dispersants as instantly claimed. This argument is not persuasive. Strom et al. teaches that the surface active agent included may be anionic, cationic or nonionic, or combinations of cationic and nonionic or anionic and nonionic. Therefore, a specific combination contemplated is nonionic and anionic. Specific examples of commercially available surface active agents include Atlox 4991 and 4913 surfactants (nonionic), Pluronic P104 (nonionic), and Soprophor FL surfactant (anionic). Therefore, Strom et al. teach a finite number of commercially available surfactants and specifically teach combinations of nonionic and anionic are suitable. Therefore, one of ordinary skill in the art would have been motivated to utilize Atlox 4913 and Soprophor FL (these surfactants read on the claimed ci). The examiner maintains that based on the teachings of Strom et al., Aven and Stock et al., one of ordinary skill in the art would have been motivated to add an ethoxylate alcohol in order to enhance foliar uptake. Applicants have argued why one of ordinary skill in the art would not have been motivated to add these ethoxylates or the unobviousness of adding them. Applicants have just argued that one of skill would find little reason to add them. The examiner disagrees as Stock et al. teach the specific reason why one skilled in the art would add them (increase in foliar uptake). Applicants argue that the Stock et al. article, teaches that in some cases when an alkanol alkoxylate has a high ethylene oxide content works best while those with a low ethylene oxide content works best. This reference it is argued does not show that the narrowly defined alkanolethoxylates works best. While the sections pointed to by applicant showing the difference between alkanol alkoxylate having a high ethylene oxide content vs. a low ethylene oxide content show that the high ethylene oxide content work better, the low ethylene oxide content composition skill increased uptake of the model compounds. Fig. 1 shows a dose dependence of the uptake and the amount of surfactant added. Even with an ethylene oxide content of 6 at 5% showed 32% uptake whereas 1% only had 13% uptake. This clearly shows that an increase in uptake occurs with increasing amounts of surfactant. Furthermore, the AE11 which reads on the instant claims shows the same kind of trend (i.e. more surfactant increases the uptake). Additionally, figure 2 shows the opposite effect that what applicants argue (i.e. lower ethylene oxide content created more uptake than the higher ethylene oxide content surfactants). As taught by Stock et al. (page 241, pointed to by applicants), the difference can be explained by the log P of the compounds such that compounds with a high log P (such as propiconazole) shows greater uptake enhancement with surfactants with a low ethylene oxide content whereas compounds which have a higher water-solubility show greater enhancement with surfactants of a high ethylene oxide content. What Stock et al. explains is that depending on the log P of the compound it may be more beneficial to choose a surfactant with either a high or low ethylene oxide content. Stock et al. does not teach that those with an intermediate log P showed no enhancement just that no correlation with the ethylene oxide content of the surfactant was observed such that it didn't matter either one used high or low ethylene oxide content surfactant. Finally, the examiner reiterates even though in certain situations a surfactant with a low or high ethylene oxide compound may work better, those with the opposite ethylene oxide content still worked. It may have worked to a lesser degree, but it still provided some uptake enhancement. This is not a teaching away from utilizing surfactant with a lower ethylene oxide content. Applicants have not demonstrated the unobviousness of the specifically claimed penetration enhancer. Applicants argue that Aven does not disclose penetration enhancers within the meaning of Applicants' component (b). Aven is not utilized for its surfactant teachings. Aven is used to show other azoles and strobins which are known in the art to be utilized in aqueous suspension concentrates. One of ordinary skill in the art would have a reasonable expectation of success of utilizing the azoles and strobins taught by Aven in the compositions of Strom et al. as Strom et al. exemplify utilizing epoxiconazole and teach azoles and strobins can be utilized and Aven teach utilizing these azoles and strobins in aqueous suspension concentrates with surfactants/dispersants such as Pluronic PE 10500 and Soprophor FL. Since the surfactants and the type of composition made of Aven is the same or similar to that of Strom et al. one of ordinary skill in the art would have a reasonable expectation of success. While none of the references disclose the specifically claimed combination of penetration enhancer and surfactant, that is why the rejection is made under 103 not 102. Strom et al. contemplated a surfactant combination of nonionic and anionic. Specific examples of commercially available surface active agents include Atlox 4991 and 4913 surfactants (nonionic), Pluronic P104 (nonionic), and Soprophor FL surfactant (anionic). Therefore, Strom et al. teach a finite number of commercially available surfactants and specifically teach combinations of nonionic and anionic are suitable. Stock et al. teach that the use of alkanol alkoxylates enhance foliar uptake. This provides the motivation to one of ordinary skill in the art to add these compounds. Therefore, the examiner maintains it would have been obvious to one of ordinary skill in the art to utilize a combination of Atlox 4913, Soprophor FL and alkanol ethoxylate with an ethylene oxide content of 11. Applicants have not demonstrated the unobviousness of the this combination. The rejections are maintained for at least the reasons set forth above.